

**Regulation (39-) 22-301.1. Doing business in Colorado.**

(1) A corporation ~~will be considered~~ is doing business in Colorado ~~whenever~~ when it has substantial nexus with the ~~minimum standards~~ state pursuant to subsection 2 of this section unless the state is prohibited from imposing an income tax on such corporation pursuant to the U.S. Constitution or Public Law 86-272.

**(2) Factor Presence Nexus Standard**

(a)

(i) Business entities that ~~are exceeded. Public Law 86-272 protects manufacturers whose only business activity conducted~~ organized or commercially domiciled ~~in a state is soliciting orders for sale of tangible personal property. Sales of services are not protected by Public Law 86-272.~~ this State have substantial nexus with this State.

(ii) Business entities organized outside the State are doing business in this State, have substantial nexus, and are subject to Colorado filing requirements and, if applicable, Colorado income tax imposed by Article 22 of Title 39 when in any tax period the property, payroll or sales of the business in the State, as such property, payroll, and sales are defined below in Subsection (c), exceeds the thresholds set forth in Subsection (b).

(b)

(i) Substantial nexus is established if any of the following thresholds is exceeded during the tax period:

(a) a dollar amount of \$50,000 of property; or

(b) a dollar amount of \$50,000 of payroll; or

(c) a dollar amount of \$500,000 of sales; or

(d) twenty-five percent of total property, total payroll or total sales.

(ii) At the end of each year, the executive director shall review the cumulative percentage change in the consumer price index. The executive director shall adjust the thresholds set forth in paragraph (i) if the consumer price index has changed by 5% or more since January 1, 2003, or since the date that the thresholds were last adjusted under this subsection. The thresholds shall be adjusted to reflect that cumulative percentage change in the consumer price index. The adjusted thresholds shall be rounded to the nearest \$1,000. As used in this subsection, "consumer price index" means the Consumer Price Index for All Urban Consumers (CPI-U) available from the Bureau of Labor Statistics of the United States Department of Labor. Any adjustment shall apply to tax periods that begin after the adjustment is made.

(c) Property, payroll and sales are defined as follows:

(i) Property counting toward the threshold is the average value of the taxpayer's real property and tangible personal property owned or rented and used in this State during the tax period. Property owned by the taxpayer is valued at its original cost basis. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period; but the executive director may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(ii) Payroll counting toward the threshold is the total amount paid by the taxpayer for compensation in this State during the tax period. Compensation means wages, salaries, commissions and any other form of remuneration paid to employees and defined as gross income under Internal Revenue Code § 61. Compensation is paid in this State if (A) the individual's service is performed entirely within the State; (B) the individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or (C) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

(iii) Sales counting toward the threshold include the total dollar value of the taxpayer's gross receipts from

(A) the sale, lease or license of real property located in this State;

(B) the lease or license of tangible personal property located in this State;

(C) the sale of tangible personal property received in this State as indicated by receipt at a business location of the seller in this State or by instructions, known to the seller, for delivery or shipment to a purchaser (or to another at the direction of the purchaser) in this State; and

(D) The sale, lease or license of services, intangibles, and digital products for primary use by a purchaser known to the seller to be in this State. If the seller knows that a service, intangible, or digital product will be used in multiple States because of separate charges levied for, or measured by, the use at different locations, because of other contractual provisions measuring use, or because of other information provided to the seller, the seller shall apportion the receipts according to usage in each State.

(E) If the seller does not know where a service, intangible, or digital product will be used or where a tangible will be received, the receipts shall count toward the threshold of the State indicated by an

address for the purchaser that is available from the business records of the seller maintained in the ordinary course of business when such use does not constitute bad faith. If that is not known, then the receipts shall count toward the threshold of the State indicated by an address for the purchaser that is obtained during the consummation of the sale, including the address of the purchaser's payment instrument, if no other address is available, when the use of this address does not constitute bad faith.

(iv) Notwithstanding the other provisions of this Subsection (c), for a taxpayer subject to the special apportionment methods under Colorado Special Regulations for Allocation and Apportionment of Corporate Income, the property, payroll and sales for measuring against the nexus thresholds shall be defined as they were for tax periods prior to 1/1/08 for apportionment purposes under those regulations. Financial institutions subject to an apportioned income or franchise tax shall determine property, payroll and sales for nexus threshold purposes the same as for apportionment purposes under the Financial Institutions special regulation.

(v) Pass-through entities, including, but not limited to, partnerships, limited liability companies, S corporations, and trusts, shall determine threshold amounts at the entity level. If property, payroll or sales of an entity in this State exceeds the nexus threshold, members, partners, owners, shareholders or beneficiaries of that pass-through entity are subject to tax on the portion of income earned in this State and passed through to them.

(vi) For purposes of the application of this rule and in order to clearly reflect the activity of a taxpayer in the state, the executive director may combine the payroll, property, or sales of two or more entities within a combined group if the payroll, property, or sales of those entities have been manipulated in order to artificially fall within the safe harbors of (2)(b)(i) of this rule.

(3) A "safe harbor" lease transaction, by itself, does not create nexus for Colorado income tax purposes.